

Care Enterprises, Inc. and Hospital & Health Care Workers' Union, Local 250, Service Employees International Union, AFL-CIO, Petitioner.
Case 20-RC-16704

February 28, 1992

DECISION AND CERTIFICATION OF REPRESENTATIVE

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT
AND RAUDABAUGH

The National Labor Relations Board, by a three-member panel, has considered objections to an election held April 25, 1991, and the Regional Director's report recommending disposition of them.¹ The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 29 for and 17 against the Petitioner, with 8 challenged ballots, an insufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and brief,² has adopted the Regional Direc-

¹ In the absence of exceptions, we adopt pro forma the Regional Director's recommendation that the Employer's Objection 4 be overruled.

² In its brief, the Employer relies on *NLRB v. Indiana Home Sanitation*, 803 F.2d 345 (7th Cir. 1986), enf. 275 NLRB No. 199 (Aug. 21, 1985) (not reported in Board volume) to support its argument that the Board should order a hearing on its Objections 1 and 2 alleging that an employee union adherent engaged in surveillance and intimidation of voters at the polling place. The Employer claims that, based on facts identical to those in the instant case, the Board there ordered a hearing. We find that the Employer's counsel has misstated the findings in that case. In *Indiana Home Sanitation*, the Board did not order a hearing but, instead, adopted the Regional Director's overruling of all the Employer's objections. Further, in enforcing the Board's Order against *Indiana Home Sanitation*, the court stated (803 F.2d at 350):

[T]he company did not come forward with evidence that established a prima facie case for setting aside the election. Moreover, it failed to raise substantial and material factual issues since the Director accepted as true all of the evidence it offered, even the controverted evidence. The company's only assertion was that the hearing should have been held in order to determine whether the conduct it complained of had an impact on the election. Its failure was that it could not offer any evidence that indicated such an impact was likely. In the absence of this kind of evidence, we cannot conclude that the Board's decision to deny a hearing was unreasonable.

In the instant case, as in *Indiana Home Sanitation*, the Employer has failed to present any evidence that raises substantial and material

tor's findings³ and recommendations, and finds that a certification of representative should be issued.

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for Hospital & Health Care Workers' Union, Local 250, Service Employees International Union, AFL-CIO and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time service and maintenance employees employed by the Employer at its Roseville, California place of business, including certified nursing assistants, nursing assistants, restorative aides, dietary employees, housekeeping employees and laundry employees; excluding business office clerical employees, registered nurses, licensed vocational nurses, all other employees, guards, supervisors as defined in the Act.

factual issues. Accordingly, we find that *Indiana Home* supports our adoption of the Regional Director's finding that a hearing is not warranted.

³ In adopting the Regional Director's overruling of Objection 11 alleging that the Union forged employee signatures on a campaign document, we distinguish the instant case from *Americare Pine Lodge Nursing & Rehabilitation Center*, 9-RC-15779 (May 8, 1991 unpublished) cited by the Employer in support of its contention that a hearing should be held. In *Americare*, the Board reversed the Regional Director and ordered a hearing because the Employer presented employee witnesses who gave affidavits that showed circumstances existed surrounding their signing the document that raised questions concerning the authenticity of their signatures. Further, the Union admitted that it had circulated five documents for signatures similar to the one in issue except that they lacked the Union's name and insignia. The Union also admitted that employee signatures were transferred by photocopying to make the one document. Here, the Employer has not come forward with any such evidence nor has the Union made any such admissions. Finally, in the present case, the source of the document and its nature as union propaganda is clear.

Member Oviatt further notes that, apart from this claimed forgery or alteration, there is no contention that the Petitioner's campaign document contains a material "misrepresentation . . . so pervasive and be unable to separate truth from untruth and . . . their right to a free and fair choice will be affected." *Van Dorn Plastic Machinery Co. v. NLRB*, 736 F.2d 343, 348 (6th Cir. 1984). In agreeing with the Regional Director and his colleagues that the objection lacks merit, Member Oviatt thus finds it unnecessary to rely on *Midland National Life Insurance Co.*, 263 NLRB 127 (1982).